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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,777	09/19/2001	James R. Geary	1632A1	9740

7590 12/26/2002

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EXAMINER

VO, HAI

ART UNIT	PAPER NUMBER
1771	6

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/955,777

Applicant(s)

GEARY ET AL.

Examiner

Hai Vo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 26 and 27 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 January 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3	6) <input type="checkbox"/> Other: _____

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-25, drawn to a restraint, classified in class 428, subclass 304.4.
  - II. Claims 26 and 27, drawn to a method of shipping articles, classified in class 206, subclass various.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product as claimed can be used in a materially different process of using that product such as one that mounts the edge portion of a glass sheet in a slot of the restraint so as to eliminate the step of placing the glass sheet on the base (US 4,225,043).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Andy Siminerio on 12/17/2002 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 26 and 27 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 10, 18, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The foam density unit in these claims is incorrect. Correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3, 6, 11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Insley (US 5,024,865). Insley discloses a container comprising an inner layer made of the compressed polyolefin microfibers and an outer covering of a polyethylene film (figure 1, and example 1). The outer covering can be made of metal (column 7, line 14). Likewise, it is clearly apparent that the outer layer has a hardness greater than that of the inner layer. It is the examiner's position that Insley anticipates the claimed subject matter.

8. Claims 1-14, and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Maurice (US 5,024,865). Maurice discloses a cushioning element comprising a first foam layer having a first density adhered to a second foam layer having a different

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second density (abstract). The cushioning element has a L shape (figure 3). The pallet cushion 110 comprises a laminate 100 of foam plastic material which is sandwiched between a pair of ply wood backing plates 104, 106 (analogous to the claimed attachment member). The foam is made of polyethylene, polyurethane (column 6, lines 22-26). The foam has a density of 4 pcf (column 5, line 55). Figures 3 and 9 read on the limitations as set forth in claims 4, 16 and 21. It is the examiner's position that Maurice anticipates the claims subject matter.

9. Claims 1, 3, 6-9, 11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Lastik (US 4,225,043). Lastik discloses a sheet shipping container comprising a slotted log 55 having an inner layer of compressible, resilient material adhered to the outer wall 58 of a rigid material such as wood or metal (column 5, lines 51-55). The compressible, resilient material is made of polyethylene foam (column 5, lines 1-5). It is the examiner's position that Lastik anticipates the claims subject matter.
10. Claims 1-3, 6, 7, 11, 14, and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Moehring (US 3,938,660). Moehring discloses a composite packing for shipping a stack of the glass sheets comprising a base 35, a plurality of glass sheets carried on the base, at least one restraint 50 located along the two opposed edges of the glass sheet wherein the restraint 50 comprises an a plastic material layer and a rigid tubular runner 51 of plastic or wood provided on the top of the restraint and through the runner the strap 41 is threaded, and a fastening member

52, 53 contacting the restraint to secure the glass sheets to the base (figures 2 and 3, column 4, lines 45-55). Figures 4 and 5 read on the limitations of claims 2,

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 4, 16, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moehring (US 3,938,660). Moehring is silent as to the vertex and the groove of the restraint 50. A modification of the vertex and the groove of the restraint would have involved a mere change in the shape of the restraint. A change in shape in itself would not render the claims patentable over Moehring. See *Graham v. John Deere Co.*,

13. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moehring (US 3,938,660) in view of Maurice (US 4,851,286). Moehring discloses a L-shaped restraint 50 comprises a plastic material layer, having raised portions 52 and 53 adjacent its ends (figures 4 and 5). Moehring fails to disclose the restraint having a two layer structure as set forth in the claims. Maurice teaches a cushioning element for protecting fragile articles from impact damage during transport and storage comprising a first foam layer having a first density adhered to a second foam layer having a different second density (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the

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restraint having a two layer structure as taught in Maurice motivated by the desire to increase the margin of safety on impact of fragile articles during transport and storage.

With regard to claims 4, 16, and 21, Maurice teaches the foam laminate having the vertex which includes a groove (figure 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the restraint having a vertex and a groove as taught in Maurice motivated by the desire to increase the conformity, thereby increasing the margin of safety on impact of fragile articles during transport and storage.

With regard to claims 8-14, 17-19, Maurice further discloses the foam made of polyethylene, polyurethane (column 6, lines 22-26). The foam has a density of 4 pcf (column 5, line 55).

With regard to claim 15, Moehring teaches the raised portion having a slot 54 (figures 4 and 5).

### ***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Tue-Fri, 8:30-6:00 and on alternating Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are

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(703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



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December 22, 2002